

LONG-TERM TRENDS IN WORLD BANK RULE-BASED SUPERVISION: OVERCOMING THE YES-MEN CULTURE

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Recibido: 12.07.2013 / Aceptado: 29.07.2013

Abstract: The World Bank lending policies and procedures are under increasing social pressure. Local communities and civil society activists demand transparency and accountability in development projects. The establishment of the Inspection Panel is a critical policy change in this direction, transforming the inner dynamics of the Bank's decision-making processes. Notwithstanding this significant advance, additional reforms are required in order to mainstream human rights law in policies and procedures.

Key words: World Bank, Inspection Panel, projects, transparency, accountability, rules and procedures.

Resumen: Las políticas y procedimientos del Banco Mundial están sometidas a una creciente presión social. Comunidades locales y activistas de la sociedad civil demandan transparencia y responsabilidad en los proyectos de desarrollo. El establecimiento del Panel de Inspección es un cambio crítico de políticas en este sentido, que transforma las dinámicas internas de los procesos de adopción de decisiones en el Banco. Aun siendo importante este avance, aún es necesario incorporar los derechos humanos en las políticas y procedimientos.

Palabras clave: Banco Mundial, Panel de Inspección, proyectos, transparencia, responsabilidad, reglas y procedimientos.

Sumario: I. No to yes-men. II. Institutional learning. III. The rules are ours. IV. The Panel's impact.

I. No to yes-men

1. The architecture of global governance is under social pressure to increase social participation, accountability and transparency. The Bretton Woods institutions, including the World Bank, do not escape this distinct trend towards improving accountability and democratisation in global governance. During the nineteen eighties, programmes and projects of the World Bank were challenged by local communities and civil society organizations. The critics (*50 Years is Enough* campaign, etc) questioned both the objectives and efficiency of the Bank's operations and programmes for delivering sustainable development and reducing world poverty.

2. Consequently the World Bank's Board of Executive Directors began to seek new ways of improving the implementation and accountability of its projects¹. To this effect, the Inspection Panel

¹ For the first critical approach to the Bank with respect to its own projects, see the results of the independent commission on the Sardar Sarovar project in India: B. MORSE and TH. BERGER, *Sardar Sarovar- Report of the independent review*, Resource Future International, Ottawa, 1992. For the full documentation on the process involved in this project, *Sardar Sarovar Project: A Compendium of Documents*, P. Cullet (ed), Ashgate Publishing, 2007.

was created in 1993². This mechanism, unique of its kind, is a constructive response by the Bank to the increasing tensions and criticisms from local communities affected by its projects, which are further amplified world-scale by global activists and communications media³.

3. This article explores the salient features of this innovative institution (section 1), the milestones and dilemmas during its first steps of institutional learning (section 2), the controversy surrounding the relative weight given to human rights law in its procedures (section 3) and finally, the progress made by the Panel and the challenges it faces ahead (section 4).

4. The Inspection Panel is the first independent body with investigative powers to be created within the Bretton Woods system⁴. In the wake of this initiative, the Inter-American Development Bank set up its own mechanism on 1 August 1994. Following this example, an Ombudsman has now competences over the International Finance Corporation and the Multilateral Investment Guarantee Agency, both of which belong to the World Bank Group⁵. Finally, the IMF created its Independent Evaluation Office (IEO) in April 2000.

5. Thus, the idea has spread within international financial institutions as a response to the increasing social pressure for greater transparency and accountability in global economic governance.

6. The World Bank Inspection Panel firmly links local to global. Its operating procedures express a mandate in this respect: «The Panel has been established for the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures».

7. The purpose is to review Bank-funded projects that have an adverse local effect⁶. The mechanism is embedded in the institutional structure of the Bank, although its integrity and independence is protected from conflicts of interest with the Bank's administrative branch.

8. Therefore, the Panel responds directly to the Board of Executive Directors, and its reports are not reviewed by other Bank bodies or departments. On this point, the Panel secretariat also stands out, as it is not part of the Bank Management and is only answerable to that authority.

9. In essence, the mechanism acts as a direct liaison between local communities / civil society and the Bank without other intermediaries. By enabling them to submit complaints or claims, circumventing the Bank's layers of bureaucracy, these communities are certainly empowered. In this respect, the Panel breaks the dynamic of the so-called «approval culture», and ensures that feet are kept on the ground, in the design and implementation of Bank projects⁷.

² See the respective Resolutions BIRF 93-10 and AIF 93-6 (1 September 1993). Better known as «The Resolution», it applies to the Bank and the International Development Association but not to the International Finance Corporation or the Multinational Investment Guarantee Agency.

³ For some first criticisms from alter-globalization groups, see L. UDALL, «The World Bank's Revised Information Policy and New Inspection Panel: Public Accountability or Public Relations?», J. Cavanagh, D. Wysham, and M. Arruda (eds), *Beyond Bretton Woods—Alternatives to the Global Economic Order*, Pluto Press, 1994, pp. 145-153.

⁴ I.F.I. SHIHATA, «The World Bank Inspection Panel—Its Historical, Legal and Operational Aspects», *The Inspection Panel of the World Bank: A Different Complaints Procedure*, G. Alfredsson and Rolf Ring (eds), Martinus Nijhoff Publishers, 2001, pp. 7-46 (available online). See also, for a general view, I.F.I. SHIHATA, *The World Bank Inspection Panel in Practice*, Oxford University Press, 2000.

⁵ For a clear explanation see A. RIGO SUREDA, «Process Integrity and Institutional Independence in International Organizations: The Inspection Panel and the Sanctions Committee of the World Bank», *International Organizations and International Dispute Settlement*, Laurence Boisson de Chazournes, Cesare P. R. Romano, and Ruth Mackenzie (eds), Transnational Publishers, 2002, pp. 165-193.

⁶ See *Accountability at the World Bank: the Inspection Panel 10 Years On*, World Bank, 2003.

⁷ See E. BROWN WEISS, P. L. LALLAS, and A. S. HERKEN, «The World Bank Inspection Panel: Participation and Accountability», *Envisioning Reform: Enhancing UN Accountability in the Twenty-first Century*, United Nations University Press, 2009.

10. In short, the Panel provides with serious incentives to ensure that the financial institution operates in a more responsible manner. In technical terms, it evaluates Management's compliance (design, evaluation and implementation of projects) with the Bank's policies and procedures (*operational policies and procedures*)⁸.

11. In practice, this «independent accountability mechanism», in the Bank's terminology, operates as a «magnifying glass», focusing on projects for which inspection requests have been made. Certainly, its contribution to improve transparency and accountability in projects means bad news for the yes-men culture⁹.

12. It goes without saying that cooperation and collaboration between the three entities (Panel, Management and Board) is, at times, particularly tense. In fact, gradual adjustments have been made to the functions of the Management, but also the Board of Directors and the Panel itself, as part of the Bank's learning curve with regards to this new accountability vehicle¹⁰. As a result, for example, the 1996 and 1999 Clarifications restated some of the functions allocated to the Panel under the terms of the Resolution¹¹.

13. The procedures are relatively simple and straightforward. Once inspection requests are registered, the Management has a period of time (21 working days) within which to submit evidence attesting to its compliance with policies and procedures. Subsequently, the Panel analyses this response, makes the appropriate enquiries and, should it consider it appropriate, issues a report proposing that an inspection should be authorised.

14. The Board of Executive Directors decides by consensus on whether or not to approve the inspection: only if the decision is positive, will the project be investigated by the Panel. The Panel employs a two stage system in its administrative procedures: an initial phase to gauge eligibility of the inspection request, and a second phase involving the inspection itself. The report submitted to the Board as a result of its investigation can lead to corrective measures which, in all cases, are designed and implemented by Management through so-called *Action Plans*.

15. The criteria for eligibility of requesters require these to be «a community of persons such as an organization, association, society or other grouping of individuals ...», residing in the borrower's territory¹². The 1996 Clarification specifies that they may be «any two or more persons who share some common interests or concerns»¹³. Furthermore, they should be affected as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank¹⁴.

16. The requests can be freely formulated, although the Bank recommends that they be simple and concise, and requires requesters both (1) to determine that they are or could be adversely affected by

⁸ See in particular F. ANDRIA NAUDE, «The World Bank Inspection Panel's normative potential: a critical assessment, and a restatement», 59 *Netherlands International Law Review* 2 (2012): 199-234 and L. BOISSON DE CHAZOURNES, «Compliance with International Standards—The Contribution of the World Bank Inspection Panel». (G. Alfredsson and Rolf Ring, eds.), *The Inspection Panel of the World Bank: A Different Complaints Procedure*, Martinus Nijhoff Publishers, 2001, pp.67-86 (available online).

⁹ For documentation on claims, see www.inspectionpanel.org.

¹⁰ On the design of the Panel and its first institutional developments, see D. HUNTER, «Using the World Bank Inspection Panel to Defend the Interests of Project Affected People», 4 *Chicago Journal of International Law* 1 (2003) pp.201-211 and L. UDALL, «The World Bank and Public Accountability: Has Anything Changed?», *The Struggle for Accountability: The World Bank, NGOs, and Grassroot Movements*, J.Fox and D.Brown (eds), MIT Press, 1998, pp.391-436.

¹¹ See Res BIRF 93-10 and AIF 93-6 (1 September 1993).

¹² See paragraph 12 of the Resolution BIRF 93-10.

¹³ For the drafting the second review see, D. BRADLOW, «Lessons from the NGO Campaign against the Second Review of the World Bank Inspection Panel: A Participant's Perspective», *ILSA Journal of International and Comparative Law* 7 (2001), pp.247-57.

¹⁴ See paragraph 12.

the Bank's activities and (2) to describe the adverse effects experienced or which will be experienced as a result of actions or omissions by the Bank administration.

17. The Panel's interpretation of the term «project» has proved to be quite extensive and covers a wide range of loans lent by the institution (investment loans, structural/sector adjustment loans etc). Similarly, the mandate is extended to projects for which the Bank acts as guarantor, not just those which are directly funded.

18. The Resolution establishing the Panel only authorizes inspection for requests alleging harm resulting from non-compliance of the Bank's *policies and procedures* «with respect to the design, appraisal and/or implementation of a project» (paragraph 12)¹⁵. Determining the causal link is thus essential: the requester has to demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank «as a result of a failure of the Bank to follow its operational policies and procedures», as well as that this failure «has had or threatens to have a *material adverse effect*».

19. The requirements are accompanied by the further condition that the alleged breach of policies or procedures is «serious»¹⁶. At the same time, the 1999 Clarification specifies that the inspection request should be able to confirm «substantially» that «a serious violation by the Bank» of its operational policies and procedures has (or is likely to have) a material adverse effect on requesters¹⁷.

20. In order to determine a *material adverse effect*, the Panel should take into consideration what the requesters' status would have been in the absence of the project: «*non-accomplishments and unfulfilled expectations that do not generate a material deterioration* compared to the without-project situation will not be considered as a material adverse effect for this purpose»¹⁸.

21. Similarly, restrictions to the exercise of authority include «complaints with respect to actions which are the *responsibility of other parties, such as a borrower, or potential borrower*, and which do not involve any action or omission on the part of the Bank»¹⁹; these complaints are excluded from eligibility.

22. Finally, the Resolution provides for a strictly regulated frame within which the Panel is authorized to exercise its powers. As a result, it cannot exercise its inspection authority on finished or closed projects, as this task corresponds to the Bank's Operational Assessment Department.

23. In addition, authority to act is directly related to loan repayments: that is, power to inspect does not end with expiry of a term, but when repayments amount to more than 95% of the loan granted. Beyond this repayment level, the panel is not authorised to register investigation requests.

24. At times, mismatches may occur when projects in the implementation stage are operating on the basis of a series of loans or tranches of credit: for example, those cases in which some repayments have exceeded the 95% threshold prior to submitting the request (such as the *Itaparica* case, where 96% of one loan and 92% of the other had been repaid).

25. However, this limitation is partially compensated by the possibility of *ex ante* inspection. In this regard, all the projects under study or in the approval phase come under the supervision of the Panel. In fact, several projects have been already inspected in their preparatory phase.

¹⁵ See I.F.I. SHIHATA, *The World Bank Inspection...* op.cit.

¹⁶ See paragraph 9b and paragraph 13 of the 99 Clarification.

¹⁷ See paragraph 9b.

¹⁸ See paragraph 14 of the Clarification.

¹⁹ See paragraph 14a.

II. Institutional learning

26. Implementing a culture of transparency and accountability in the Bank inevitably leads to internal tensions, conflicts and readjustments. In establishing the Panel, a remarkable institution was incorporated to the structures and activities of the Bank. This change set in motion a collective learning process, seeking compromise and balance in obtaining compliance with the rules of the game, namely, the Bank's policies and procedure. The process of revising the Panel's functions, which led to the 99 Clarification, provides an example in this regard²⁰.

27. Logically, one of the most sensitive and complex questions addressed by the Panel in those years was its relation with Management. There is no question that defining and demarcating the Panel and Management's different functions was not an easy task. In practice, even though they understood its rationale, Bank personnel found it hard to swallow that a new independent body would be taking a very close look at its projects.

28. In the first years, in fact, Management tried to communicate directly with the Board of Executive Directors as much as possible, informing it in advance of the corrective action plans agreed on with the borrowers without the Panel's participation, and frequently, even without its prior knowledge. Thus, some action plans were deliberately presented shortly before the Board meeting and in the same meeting in which the Panel submitted recommendations. In this way, Management directly included in its responses corrective measures (eg. the *NTPC case*) in order to avoid a full investigation²¹. Using these tactics, potential investigation authorizations were pre-empted.

29. This state of affairs reached a turning point in 1997, when the Board of Executive Directors contested an investigation authorization vote, failed to adopt the decision, and instead decided to merely authorize an action plan to be controlled by the Panel over the next 12 months. In that meeting of the Board, it became obvious that a review was needed to spell out the Panel's functions. Thus, the review led to the Clarification of 1999, which to some extent ameliorated relations between the Panel and Management. Between 1996 and 1999, the Executive Board only authorized 1 of the 4 investigations recommended by the Panel. Following the Clarification, the system began to operate in a less restrictive manner.

30. The *Yacyreta* project is particularly illustrative in this context. The request, dealing with resettlement and environmental conservation, exemplifies the tensions inherent in the entry into play of the new mechanism and the need to rebalance.

31. In this case, Management questioned the eligibility of the request, making a quite narrow interpretation of the Resolution (eg. the scope of the expression «in the borrower's territory»). In essence, it denied that it was feasible for a group of people residing in Paraguay to submit a request in respect of a project in Argentina, which was the actual borrower. In order to question eligibility, it also contested the representation of non-governmental organisations, as well as the related non-disclosure of requesters' names.

32. As a result, the Panel responded to these allegations, explaining the grounds for the requesters' eligibility in the particular case. The specific grounds alleged in defence of eligibility were detailed: (1) the project was a joint venture involving two countries, (2) the Paraguayan government had assumed legal obligations through agreements between the Bank, Argentina and Paraguay, (3) the loans had been transferred to an institution created by both countries and, finally, (4) the Bank had granted a loan, part of which was to be allocated to resettlement of the Yacyreta inhabitants. In short, although the Panel

²⁰ For a summary of the controversial case from the perspective of the World Bank's legal adviser, see I.F.I. SHIHATA, *The World Bank Inspection Panel in Practice*, Oxford University Press. 2000, pp.173-203.

²¹ See *Accountability...* op.cit.p.43-47.

had a clear competence to interpret eligibility, its members were somehow compelled to defend those grounds in detail.

33. Added to this, sometime later, Management submitted two action plans which had been agreed with the Argentinean and Paraguayan authorities just before the Executive Board meeting which was about to discuss the report recommending an investigation. At a critical time when the Panel's practices were still consolidating, it was clear to its members that Management was undermining their functions and authority. In fact, the Board even decided to disregard the Panel's recommendation in this case, and ordered it to review issues such as the suitability of the action plans.

34. This final outcome, as expected, led to considerable criticism²². In any case, subsequently, the Board of Executive Directors required the Panel to review compliance with *procedures*, and excluded the review of compliance with the Bank's *policies*. Faced with this constraint, the Panel members resisted, as they considered that it was not easy to distinguish between them. Therefore, it requested a clarification from the Board of Executive Directors, which was not forthcoming.

35. In sum, the restrictions imposed by the Board of Executive Directors and Management on the Panel in different cases have not prevented its members from seeking for compromise to inspect the projects without overstepping the mandate. The Panel conveyed its message in these cases in various ways. Thus, for example, its inspection of the Yacyreta project determined that the mere fact of drawing up two plans amounted to implicit confirmation *per se* of non-compliance with regard both to resettlement and environmental provisions. At the same time, the disclosed information called into question the Bank's own Environmental Department which was promoting the Yacyreta Project as a sustainability model.

36. This particular case showed both Management and the Board of Executive Directors the power exercised by the new institution through the disclosure of information. The Yacyreta Project inspection procedure revealed how the tasks granted to the Panel were difficult to neutralize. The new policy of transparency and accountability was beginning to have concrete effects on the Bank's everyday activities.

37. A simple event exemplifying the Bank's difficulties in adapting to the new rules of the game, was the public statements made by the then Bank Vice President for Latin America and the Caribbean, claiming in a press conference that the Panel had certified that Management complied with the Bank's policies and procedures in this project: these declarations caused a wave of protests by civil society organizations that had been following the procedure. Finally, the Bank's President ended by issuing a public apology for the «erroneous» treatment of the Panel's information.

38. This type of outcomes helps to clarify (disputed) procedural issues. Clearly, civil society has played and continues to play an important role in the evolving functions of the mechanism. In practice, the Panel's operations were under the intense scrutiny of a decentralized network of civil society organizations with direct access to global media.

39. Ultimately, the establishment of the Panel is a «triumph» for critical activists; this is to say, those who first organised themselves in order to change and upgrade the Bank programmes and projects from the nineties onwards. Therefore, it is obvious that civil society empathizes with the mechanism, despite being critical with respect to its structural limitations with regard to its mandate and resources²³. In fact, to date, their relations with the Panel are reasonably fluid and cordial.

²² See, in particular, the public letter to World Bank President Wolfensohn from 25 NGOs led by the Center for International Environmental Law (CIEL) in January 31, 1997.

²³ See, for example, D. L. CLARK, *A Citizen's Guide to the World Bank Inspection Panel*, CIEL, Washington D.C. 1999.

40. Finally, another controversial issue which merits attention is the limits on disclosure of operational information associated with private sector activities. That is, the extent to which the Panel is able to gain access to this information. As is known, the Bank implements its projects by collaborating with the private sector in a number of ways, often through public-private partnerships. In consequence, it is important to control business activity carried out under the auspices of the Bank projects.

41. The Bujagali Project is particularly illustrative in this regard, and exemplifies the challenges and cultural changes that the Panel is bringing about in the Bank's practices. In this case, during the mid nineteen nineties, the Ugandan government invited several large scale enterprises to study the possibility of participating in a state energy development programme. The AES Corporation was interested in taking part, and began negotiations for power production in the Bujagali Falls area. In this case, the increasing spread of social criticism of this venture targeted the lack of transparency of the conditions of an energy sale agreement.

42. In brief, in order to proceed with building the infrastructure, the parties agreed to set up AES Nile Power Ltd (AESNP), as a subsidiary of the AES Corporation. The Bank expected to fund the Bujagali project with the capital contribution of over 100 million dollars from AES, in addition to the amounts contributed by finance institutions such as the African Development Bank (50 million dollars) and export credit institutions (200 million dollars). Thus, AESNP would build the hydroelectric plant and would sell electricity to the state company UETC²⁴ through a 30 year energy sale contract²⁵.

43. Logically, public access to the legal terms and conditions of this energy sale agreement was important for an overall assessment of the project. However, the Inspection Panel was unable to analyse the agreement, nor was Ugandan society able to discuss it. In this respect, not only did the government fail to properly inform society, but the Bank did not inform the Panel either: Management argued that Bank Procedure BP 15.70 on information disclosure did not cover information on agreements between third parties.

44. Inevitably, the lack of access to this critical information obstructed the investigation. Thus, the Panel felt obliged to mention in its report that, although there are no rules in place requiring Management to disclose information on *agreements to which it is not party*, access to such agreement would have been crucial for Ugandan society to participate in a public (and informed) debate on the suitability or advisability of the project.

45. Last but not least, the Panel also formally requested the Board of Executive Directors to clarify the policy on disclosure of operational information, in relation to activities in the private sector linked to Bank projects.

III. The rules are ours

46. The Inspection Panel has the ability to improve Bank's projects. However, the rules employed in its work are restricted to Bank's policies and procedures. On this point, it is necessary to address an issue which is especially important for the performance of future operations: this is to say, the critical technical issue of *applicable rules* (i.e. whether or not human rights provisions should be taken into account in its procedures).

47. Currently, the Resolution regulating the Panel leads to legal *self containment*: in essence, this body is required to analyse harm resulting from *non-compliance with its own regulations and stand-*

²⁴ UETC (Uganda Electricity Transmission Company Limited).

²⁵ BOOT Contract (Build, Own, Operate, Transfer).

ards (*operational policies and procedural norms*). In consequence, the Panel's own *applicable* rules are basically restricted to the Bank's rules²⁶.

48. In this regard, constraints are evident: the Panel's interpretations of the Resolution are subject to review by the Board of Executive Directors. Lacking its own legal services, in addition, it is obliged to use those provided by the Office of the General Counsel²⁷.

49. The Bank authorities do not consider it compulsory to apply other relevant international legal rules (read human rights law) on a regular basis. Unfortunately, this institutional practice is neither new nor unique in current rule-based global governance. Specialized international regimes tend to operate self-referentially generally, and thus do not apply other international legal rules on an equal footing to the 'their rules'.

50. Nowadays, it is reasonable to mainstream human rights law in the rule-based programmes and projects of international economic institutions; particularly, if we take into account the deep social impact of their policies²⁸. Notwithstanding this fact, it is clear that the Directors of the financial institutions are reluctant to incorporate the human rights legal *acquis* in their everyday activities.

51. Both the Bank and the Fund's legal advisers Shihata and Gianviti addressed this crucial and controversial issue with cautious²⁹. Roberto Dañino, successor of Shihata, also addressed the issue in a formal legal opinion³⁰. The approach to the issue taken by all three is clearly restrictive. Essentially, they attempt to design minor solutions, given the pressure exerted on the Bank by human rights institutions, local groups and activists.

52. For the World Bank, the primary rules are what they are: the articles of the Bank's constitutive agreement. As such, these rules function as the 'terms of reference' for all the Bank's policies and procedures adopted by the Board of Executive Directors (eg. safeguard policies).

53. The Panel is subject to those rule-based parameters. As a direct result, its applicable rules do not pay due deference to the current global standards of individual rights (read human rights). Such state of affairs has a direct impact on inspection activity: the Panel members cannot openly (and easily) apply human rights law in their procedures.

54. At the same time, inspection requesters are required to allege breaches or infringements of the Bank's policies and procedures in order to maximize the chances for their requests to be registered. In sum, allegations of human rights issues are (at most) strictly complementary. Under this logic, therefore, the Bank's applicable rules define on what issues it is accountable and according to which criteria.

²⁶ See P. ZAPATERO, «Modern International Law and the Advent of Special Legal Systems», 23 *Arizona Journal of International and Comparative Law* 1 (2006): 55-75.

²⁷ See paragraph 15 of the Resolution. For a critique of the weight of the Office of the General Legal Counsel from the perspective of civil society, see D. HUNTER, «Using the World Bank Inspection...op.cit.p.208.

²⁸ For the first studies on this issue see, in particular, see D. BRADLOW, «The World Bank, the IMF, and Human Rights», 6 *Transnational Law and Contemporary Problems* (1996):47-90 and RAJAGOPAL,B. «Crossing the Rubicon: Synthesizing the Soft International Law of the IMF and Human Rights», 11 *Boston University International Law Journal* (1993): 81-107.

²⁹ See I.H.I. SHIHATA, «The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements», 17 *Denver Journal of International Law and Policy* (1988): 39-66 and F. GIANVITI, *Economic, Social and Cultural Rights and the International Monetary Fund*, 2002. From the perspective of both institutions, see also *The World Bank: Development and Human Rights*, 1998 (a document published to celebrate the Universal Declaration of Human Rights) as well as S. PEREIRA LEITE, «Human Rights and the IMF», 38 *Finance & Development* (2001).

³⁰ See I.H.I. SHIHATA, *Issues of «governance» in borrowing members: the extent of their relevance under the Bank's Articles of Agreement: Legal memorandum of the General Counsel*, World Bank (21 December 1990), I.H.I. SHIHATA, *Prohibition of Political Activities in the Bank's Work: Legal Opinion by the Senior Vice President and General Counsel*, World Bank (12 July 1995) and R. DAÑINO, *Legal Opinion on Human Rights and the Work of the World Bank by the Senior Vice President and General Counsel*, World Bank (27 January 2006).

55. Interestingly, the IBRD Articles of Agreement establishes that only *economic considerations* are to be taken into account in the World Bank decision-making:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I³¹.

Choosing to make decisions under such a restricted approach equals to do things with a limited rationality. The phenomenon is fully encapsulated by a particularly clear term: *self containment*.

56. In short, the Panel basically supervises compliance with Bank standards. As a result, local communities and groups of individuals tend to target the non-compliance of (a) articles of the Bank agreement, (b) loan agreements, (c) *Operational Directives* (eg: OD.401 on environmental assessment), (d) *Operational Policies* (eg: OP 4.09 on plague control), (e) *Bank Procedures* (eg: BP 4.10 on indigenous peoples), (f) *Good practices* (eg: GP 14.70 on Involving Nongovernmental Organizations in Bank-Supported Activities), (g) etc. Other international rules are excluded beforehand, despite being alleged by the requesters.

57. Probably, Panel members would prefer to do their job under a more open rule-based rationale. In any case, the degree of openness to other international rules is a controversial issue; and one which inevitably continues to persist, as witnessed by the criticism and social pressures to which the Bank is subject.

58. At first glance, human rights law can be more easily incorporated in the Panel's procedures through the operation of interpretation: this is to say, «taking into account» other rules of international law (article 31.3c of the Vienna Convention of the Law of the Treaties) when interpreting the Bank's rules³².

59. Beyond this, however, *direct applicability* of human rights provisions is not easy. The *standard form* for inspection requests illustrates the structural limitations imposed in relation to the application to other rules of international law. These points are particularly noteworthy:

- Issue 1: «We understand that the Bank has the following policies and/or procedures [list or describe] : _____»
- Issue 2: «Our rights/interests are [describe] : _____»
- Issue 3: «The Bank has violated its own policies/procedures in this way: _____»

60. Finally, the form ends by stating: «We therefore believe that *the above actions/omissions which are contrary to the above policies or procedures* have materially and adversely affected our rights/interests and request the Panel to recommend to the Bank's Executive Directors that an investigation of these matters be carried out in order to resolve the problem».

61. In short, the Bank aspires to apply international human rights law in its procedures only insofar as it is reflected or incorporated by reference in its own policies and procedures.

62. As a result, the functional design of these *applicable rules* makes it difficult for the Inspection Panel to *directly apply* human rights law in its procedures. In the light of this evidence, requests tend to be based on allegations of non-compliance with the World Bank's *safeguard policies* (environmental

³¹ See Article IV, Section 10.

³² On the limits of this approach, see P. ZAPATERO, «Modern international law...op.cit.

assessment/compulsory resettlement/indigenous peoples, cultural heritage/forestry/natural habitats/dam safety /pest control).

63. The widening of the Bank's applicable rules is a critical challenge for World Bank reform³³. In the meantime, paradoxically, the requesters and their representatives (often human rights activists) have strong incentives to become genuine experts in the Bank's rules. In this respect, civil society activists have no other option if they aspire (in terms of registration and eligibility criteria) to change a given Bank project.

64. The case for human rights law within the Panel's procedures is self-evident: mainstreaming human rights law into the procedures would secure the positive social effects and inhibit the negative effects of projects. However, the difficulties of proceeding in this respect have led the Panel to address a wide variety of (basic) human rights issues with other legal language: as a result, the Panel often addresses human rights issues... but using *other words*.

65. The failure *to pay due deference* to human rights law (granting legal relevance within procedures) does no good to the Bank in the long-term. Ultimately, it ignores the possibility of tensions and conflicts with the rules of other international regimes (eg: UN Covenant on Economic Social and Cultural Rights), or their authoritative interpretations (eg: General Comment 14).

66. Such institutional behaviour is not sustainable, given the fact that global governance amplifies rule-based interdependence: acts and rules from one international regime may well have adverse effects on the functioning of other. In sum, the issue of whether or not human rights law is applied by the Inspection Panel is a crucial issue for it to operate properly³⁴.

67. A project which clearly illustrates the difficulties and dysfunctions faced by the Panel in this area is the Bujagali Hydroelectric Project. In this case, a significant part of the inspection request addressed issues directly concerning cultural rights and religious rights. However, the Panel was unable to apply related UN human rights law and thus to deal with these adequately.

68. The Project had a direct impact on the Bujagali Falls which had religious and cultural significance for the Ugandan Busoga people, who professed the belief that their spirits resided in its rapids³⁵. It goes without saying that this belief was equally worthy of protection to those professed towards sacred places such as the Basilica of Saint Peter, or the Wailing Wall...

69. In this case, the Inspection Panel confirmed that Management had made efforts to consult the local communities and religious leaders, attempting to seek formulas for addressing the religious and cultural consequences of the demise of the falls (!).

70. The project had a clear human rights impact. However, the structural limitations of its applicable rules with regard to human rights law placed the Panel in the awkward position of addressing the issue by raising mere «concerns» with respect to «spiritual» issues which were outside the Bank's own policies and procedures. As a result, the Panel had to address human right issues without explicitly applying human rights provisions in this area.

³³ See *World Bank Operational Manual* (online document).

³⁴ For studies on this issue see G.A. SARFATY, *Values in translation: human rights and the culture of the World Bank*, Stanford University Press, 2012, FUJITA, S., «The Challenges of Mainstreaming Human Rights in the World Bank», 15 *The International Journal of Human Rights*, 3 (2011):374-396, and G.A. SARFATY, «Why Culture Matters in International Institutions: the Marginality of Human Rights at the World Bank», 103 *American Journal of International Law* 4 (2009): 647-683.

³⁵ For the legal position of a Ugandan activist representing groups critical of the project, see F.C. OWEYEGHA-AFUNADUULA, «Bujagali as Ethnocide: Cultural and spiritual death of the Indigenous community of Basoga, Uganda», NAPE/SBC Occasional Paper on «Linking Culture, Spirituality and Rights in Sustainable Development», NAPE/SBC-CSR-SD-1/2005, Kampala, 2005.

71. Obviously, there are other projects raising similar human rights concerns. As a general rule, they are addressed without applying human rights law. That said, on some occasions, human rights issues have begun to be laterally considered in some Panel procedures.

72. The Chad-Cameroon Oil pipeline Project is a notable example. The case is noteworthy not only because of its innovations and breadth, but also due to the fact that it was most clearly concerned with the so-called *human rights situations*³⁶. The investigation report on the first request submitted (in March 2001) entered territory hitherto unexplored by the Bank. In fact, it is the first time that the Board of Executive Directors came up against human rights issues formally framed in a specific project: the request intelligently alleged that the Bank had violated its directives on appropriate governance and/or human rights.

73. Interestingly, prior to this case, the Bank's legal adviser, Ibrahim Shihata, had issued two interpretative opinions (1990/1995). In the first of these, he emphasized that the prohibition on carrying out «*political activities*» as part of the Bank's tasks was a *prohibition on interfering with the way in which a country addressed political type human rights*, insofar as this does not have a demonstrable effect on the economy of that country. At the same time, in any case, he suggested that human rights considerations could have a role in evaluating the «net effect» of development projects and programs on social welfare³⁷.

74. These legal opinions closed ranks around what was considered to be acceptable (and convenient) by the World Bank's 'epistemic community'³⁸. Therefore, the Panel faced a dilemma in that while holding these legal opinions, civil society was exerting pressure to ensure that its inspection activities were in line with human rights standards. In sum, it actually had scant manoeuvrability between the two stools. Interestingly, the Panel ended by considering the *effect* of the human rights situation on *appropriate governance* and, accordingly, on the project itself, as *human rights situations which affect the implementation of projects*.

75. Consequently, information gathered in this matter led the panel to express, not without carefully choosing its terms, that the situation with regard to human rights issues/appropriate governance was relevant for the specific project, and «far from ideal».

76. The then Panel president, Edward Ayensu's clearly stated this fact. The president recalled that the actual requester, among other allegations, claimed to have been tortured for his opposition to the Bank's Project, and that as a result, «the Panel was obliged to examine the situation of human rights and governance in the light of Bank policies».

77. At the same time, Ayensa emphasized the Panel's team position: «We are convinced that the approach taken in our Report, which finds human rights implicitly embedded in various policies of the Bank, is within the boundaries of the Panel's jurisdiction».

78. Caution is evident. The Panel expressly welcomed the fact that Management concurs at least in general terms, with the approach to this «sensitive subject» and recalls that Management has

³⁶ On the evolution of this case see in particular SHARP, D. N, «Requiem for a Pipedream: Oil, the World Bank, and the Need for Human Rights Assessments», 25 *Emory International Law Review* 1 (2011): 379-410, M. A. BEKHECHI, «The Chad-Cameroon Pipeline Project: some Thoughts about the Legal Challenges and Lessons Learned from a World Bank-financed Large Infrastructure Project», *Energy Networks and the Law: Innovative Solutions in Changing Markets*, Oxford University Press, 2012 and A. M. LEIBOLD, «Aligning Incentives for Development: the World Bank and the Chad-Cameroon Oil Pipeline», 36 *Yale Journal of International Law* 1 (2011):167-205.

³⁷ See I.H.I. SHIHATA, *Issues of «Governance» in Borrowing Members...* op.cit and I.H.I. SHIHATA, *Prohibition of Political Activities in the Bank's Work...* op.cit.

³⁸ See P. HAAS, «Introduction: epistemic communities and international policy coordination», 46 *International Organization* 1(1992):1-35.

pledged to continue to monitor the developments in this area within the context of the applicable Bank policies»³⁹. It also adds some statements that are particularly significant to be reproduced here:

The Panel agrees and believes that the situation in Chad exemplifies the need for the Bank to be more forthcoming about articulating its role in promoting rights within the countries in which it operates. [...] Mr. Chairman, perhaps this case should lead the Board to study the wider ramifications of human rights violations as these relate to the overall success or failure of policy compliance in future Bank-financed projects.

79. The Chad-Cameroon case is certainly a critical one. At the same time, it shows that the Bank has a way to go in joining the legal culture of human rights. And here, it is clear that the Panel can help, provided that the Board of Executive Directors supports such outcome.

80. Interestingly, for example, the Senior Vice President and General Counsel of the World Bank Group from 2003 to 2006, Roberto Dañino, closed his legal opinion on human rights and Bank activities with this statement:

The articles of agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities since it is now evident that human rights are an intrinsic part of the Bank's mission⁴⁰.

81. Currently, there is a very slow incremental policy trend within the Bank to incorporate some human rights concerns in its institutional practices. If such trend is steady, something which remains to be seen in the long-term, the Panel would enjoy greater powers to do a better job.

IV. The Panel's impact

82. However, there is no doubt that the Panel faces significant challenges ahead. This new institution resulted from a desire to develop more efficient approaches to institutional accountability in the global policy arena; an arena in which local community groups affected by the Bank's policies are voicing their grievances through a increasing variety of formal and informal channels.

83. Nevertheless, the institution is faced with several structural limitations, such as the above mentioned issue of its applicable rules but also the fact that it cannot modify or cancel projects, nor it is able to determine compensation for private individuals.

84. In essence, the most critical effect of the Inspection Panel on the Bank's activities consists of the detailed data it compiles, which is used to support the Management's Action Plans submitted to the Board of Executive Directors in response to the Panel's findings.

85. In this respect, its function basically consists of redirecting projects (either at their draft stage or those which are in progress) through information disclosure, although it has no input at all in drawing up those plans.

86. From the perspective of comparative international law, this interesting institution lies in a no-man's land, by using information disclosure to promote internal policy change. The Inspection Panel reveals crucial information for redirecting the Bank's activities. However, its decision-making procedure

³⁹ E. AYENSU, *Remarks of the Chairman of the Inspection Panel to the Board of Executive Directors on the Chad-Cameroon Pipeline Projects*, World Bank Inspection Panel (12 September 2002).

⁴⁰ R. DAÑINO, *Legal Opinion on Human Rights*...op.cit.

does not correct institutional errors, or inappropriate practices in the Bank's Projects. This task instead falls directly on the Bank Management, which recommends corrective measures in the Action Plans.

87. The Panel is therefore an information-based mechanism. In the absence of any such information, its effectiveness is handicapped. This is why compliance with Bank Procedure BP 17.50 (on the disclosure of operational information) is critical to the Panel's task.

88. In this respect, the Bank's failure to adequately comply with Bank Procedure BP 17.50 makes it difficult to inspect the project's compliance with other policies and procedures. In this regard, this procedure is structurally instrumental for the proper functioning of the Inspection Panel.

89. As mentioned, the Panel does not focus on the behaviour of public and private domestic institutions operating in projects under inspection: the ability to investigate governments themselves, and domestic public authorities as well as companies, is excluded from its mandate. In essence, the Panel is not allowed to investigate performance of the borrowing country in any project. The Resolution itself excludes «complaints with respect to actions which are the responsibility of other parties, such as a borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank» (paragraph 14a).

90. Similarly, the public contracting of goods and services is excluded from the Panel's mandate: «procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any such goods and services,» (paragraph 14b).

91. However, the mechanism inevitably discloses some critical information on the practices of private sector bodies associated with the Bank, as well as irregular and/or ineffective state practices. Interestingly, this information may play an (indirect) role in the domestic policy (and judicial) arena.

92. The Panel's information disclosure is having critical unintended effects on the functioning of the Bank itself. For example, the development of the technical part of Bank projects (construction, infrastructures of large scale public works etc) frequently fails to advance on a par with (or prior to) strengthening of the borrowers' institutional capability. However, capacity-building tends to take place subsequently at times, as a result of corrective measures taken following the Panel's intervention.

93. In sum, the establishment of this inspection body has made Management accountable for its behaviour, albeit through the restrictive prism of compliance or non-compliance with the Bank's own policies and procedures. The fact that both the Washington offices, and the headquarters of projects in the field, are accountable is, in itself, a substantial breakthrough.

94. Obviously, some of the Panel investigations have been restricted by the Board of Executive Directors or hindered by Management, as has been mentioned. It is nonetheless evident that these limitations have not prevented the Panel from modifying the Bank's behaviour and conduct, and at times this has occurred even prior to submission of its own reports. This fact clearly indicates how the institution makes use of, and wields considerable *soft power*⁴¹.

95. There are a number of cases exemplifying this phenomenon. The Nepal-Aron project is a typical case in point, in which the Bank opted to dismiss the Project following the Panel's report, along with another separate review commissioned by the President from an independent group. Leaving aside the fierce debate engendered by this decision, it is clear that the Panel's activity in this case was crucial to cancellation of the Project in question.

⁴¹ J. NYE, *Soft Power: The Means to Success in World Politics*, Public Affairs, 2004.

96. But there are other examples; a simple illustration being the *Pro Huerta* programme in Argentina (the case of Argentina-Structural Adjustment Loan): in essence, conserving this programme (aimed at promoting small scale crops for home consumption or subsistence) was expressly included in the Bank's loan agreement with the country as one of the programmes to be protected from domestic budgetary cuts.

97. However, due to a number of administrative difficulties, the budget allocated to the programme was under threat prior to the Panel's visit. Interestingly, it was the Panel's field visit to Argentina which defused the situation; only then did the Economy Ministry understand the seriousness of not sending to Congress the statutory act for executing the budgetary allocation undertaken. It is just a small example which, however, shows the Panel's capacity for modifying state conduct in the field.

98. In consequence, the mere involvement of the Panel may have significant effects on internal policies and decisions of borrowing countries in some cases.

99. Another interesting example of the Panel's soft power is the Bugajali Hydroelectric project addressed earlier. In this case, the project took the form of a *joint-venture* between the International Development Association and the International Finance Corporation. The Panel's impact on Bank tasks was critical in this case, as an inspection request was sent by various local organizations with respect to several projects related to the Bujagali Hydroelectric Project (registered on 7 August 2001) some months prior to the Executive Director analysing the issue of financial assistance.

100. Following Management's approval of authorization to investigate this request (26 October 2001), there was a period of considerable uncertainty and discussion within the Bank itself: the debate focused on the advisability and appropriateness of approving the project in the light of this open procedure. Unquestionably, the possibility of eventual information disclosure by the Panel had an effect on the viability of the project.

101. The Yacyreta Project also provides another example of soft-power in which eventual information disclosure by the Panel was an incentive for management ranks to act preemptively. In this case, the Board of Executive Directors excluded the Panel from its supervisory functions when executing Management's action plan.

102. However, although the Panel was excluded, the Board of Executive Directors was compelled to create a special committee for the project, as a control device to watch its back in the absence of the Panel functioning. Interestingly, in consequence, although the Board of Executive Directors may feel uncomfortable about the Panel at times, its members are also aware of the structural value of independent control in their activities.

103. Unquestionably, there are some changes in the Bank's accountability culture. At the same time, the case shows how the professionals working on the Panel began to assume a degree of autonomy, even publicly questioning the reasonability and efficacy of some of the Board's decisions to distance it from the cases.

104. Interestingly, a second inspection request was made regarding this same project. In this regard, the Panel's ten year report itself (openly) asks the extent to which such a request could have been avoided if the Board had allowed the Panel to remain in control of implementation of the Action Plan⁴².

105. A final case worthy of mention is the Quinghai Project. This controversial Bank Project led to concerns about resettlement of ethnic Han Chinese in the Tibetan zone. The project was at an

⁴² See *Accountability ... op.cit.* p.62-73.

advanced stage of approval when a non- local NGO (ICT: International Campaign for Tibet) requested an inspection (16 June 1999).

106. Given the uncertainties surrounding the project, following submission of this request to the Inspection Panel, the Board of Executive Directors took an unprecedented decision, and, much to the surprise and perplexity of many observers, it approved it with a caveat. The condition was that «that no work be done and no funds be disbursed for the \$40 million Qinghai component of the project *until the Board decides on the results of any review by the independent Inspection Panel.*»

107. This measure was a surprise to everyone. The Bank and the borrower even made amendments in order to include this repayment condition, and they agreed to incorporate the eventual modifications, following the Panel's inspection. As is clear, the shadow of the Panel and its procedures indubitably fell on the Project. Therefore, the mechanism was crucial for that outcome to be produced.

108. But the case goes further. In this respect, the level of detail in dealing with this controversial Project (linked to the Tibet question) shows a greater institutional sensitivity within the Bank towards structural global policy issues related to its traditional projects on large infrastructures.

109. Interestingly, a formal letter of compromise by the Chinese government was incorporated to the instruments negotiated for executing the project, in an attempt to respond to the susceptibilities of local communities with regard to the administrative organization of the area following the population resettlement: «Borrower hereby states that implementation of the respective part of the project concerning Qinghai [...] will not affect the Mongol and Autonomous Tibetan nature of the Haixi prefecture in Qinghai.»⁴³.

110. In addition, the Panel's President requested a legal opinion from the Bank's legal adviser with respect to the scope of the Chinese guarantees on the preservation of the administrative status of said prefecture. Finally, the political and social difficulties of the project led to the Board of Executive Directors withdrawing its definitive support for the project (July 2000).

111. Therefore, the Panel is fulfilling a critical function with regard to World Bank's accountability. However, its functioning inevitably leads to some internal tensions, confusion and even concerns within the managing structures of the Bank itself. In the internal context, the Inspection Panel's presence is perceived as a double-edged sword. That is, it is seen as a guarantee for preventing inappropriate practices and errors while at the same time it poses a threat to the viability of some projects.

112. In this regard, the Chad-Cameroon project referred to above is a defining example of the new context in which projects are to be designed and implemented. With this flagship project of the Wolfensohn era he attempted to explore a change of direction in the Bank's approach to development programmes. However, events showed that things were viewed in a different light outside the Bank, and once again the Inspection Panel ended by getting involved. In fact, the project generated two inspection requests, the first from Chad (March 2001) and the second from Cameroon (September 2002).

113. The project aimed to transform income from the extraction and distribution of oil in Chad into social investment and infrastructures, through the Chad government's commitment to allocate the appropriate budget in this respect. The goal was to exploit oil reserves in the Doba valley, under conditional allocation of the benefits resulting to the implementation of development programmes by domestic authorities.

114. In order to achieve this, the national parliament was required to approve a law regulating such a scheme, which included precise targets and indicators for reducing poverty. For example, it was

⁴³ On safeguard policies for disputed areas see *Operational Policy 7.60: Projects in Disputed Areas* and *Bank Procedure 7.60: Projects in Disputed Areas*.

determined that 10% of net income assigned to Chad would be placed in a trust fund for future generations and 5% would be spent on regional development in the production zone. At the same time, funding was also allocated to social, environmental and infrastructure services.

115. Similarly, investments in the private sector were a central pillar of the project. In fact, the World Bank was only going to contribute 4% of total costs. The private allocation would be covered by an international consortium of oil companies (ExxonMobil, Petronas and Chevron...) which would develop the oil fields, drilling approximately three hundred oil wells and building an underground oil pipeline extending over a thousand kilometres to the loading facility on the Cameroon coast. Under this new scheme, the Bank granted loans to the Chad and Cameroon governments to pay for a stake in the joint-venture which was to build the oil pipeline.

116. The purpose of these credits was to strengthen Chad and Cameroon's institutional capability to manage the whole process. Thus, the International Finance Corporation would grant a loan to this joint-venture on a par with the syndicated loans for oil transport services. In turn, the International Development Association would grant credits for the Projects for Strengthening Management Capability in the Oil Sector on one hand, and on the other, for Management of the Oil Economy.

117. However, controversies proliferated, spurred on by a series of events. Probably, the tipping point was the breaking news on a purchase of arms by the Chad government with premiums disbursed by Chevron and Petronas. As was to be expected, this information was a tough blow for the then Bank President's flagship project. The finance institution reacted by freezing the external debt programme and conditioning its reactivation to guarantees from the government that those funds would be used for development. At the same time, a fierce internal discussion within the World Bank was focusing on the under-evaluated environmental aspects of the project, under the pressure from multiple civil society groups targeting human rights, corruption and environmental concerns⁴⁴.

118. Indubitably, the Bank had embarked on a very ambitious project without paying due attention to its human right challenges⁴⁵. As a result, some measures had to be taken along the way. At one point, for example, Wolfensohn successfully mediated with the Chad government to release the Member of Parliament Ngarlely Yorongar, in prison because of his political activities related to this project (see Amnesty International Campaign).

119. Ironically, Yorongar submitted the first inspection request for the project right after his release. The request, which was registered in April 2001, was made on behalf of the communities living in the Doba oil fields area. As a result, the Board of Executive Directors soon had to analyse a Panel report in September 2002.

120. The findings provided evidence that Management had not given the Panel relevant information on the budgetary distribution of oil income for Chad, thus depriving it of documentation explaining organization and distribution of income. The issue was openly addressed in the Board of Executive Directors' meeting, with the participation of the general legal adviser, who indicated that the Panel's task to supervise compliance entitled it to a right to access pertinent confidential information.

121. The case is also relevant because the Bank also enlisted two further institutions to assist with complementary supervision of the whole project. The Bank decided to provide guarantees to local communities and civil society during the implementation of the project.

⁴⁴ For initial critical positions see S. NGUIFFO, and S. BREITKOPF, *Broken Promises: The Chad Cameroon Oil and Pipeline Project; Profits at any cost?*, Friends of the Earth-Milieudefensie, Amsterdam, 2001.

⁴⁵ On the activities of the Bank with regard to extractive industries see in particular D. DEVAL, and J. MICHAEL, «Governance and Accountability in Extractive Industries : Theory and Practice at the World Bank», 30 *Journal of Energy and Natural Resources Law* 2 (2012):101-128.

122. As a direct result, in February 2001, an international advisory group was set up, comprising 5 members of national parliaments (a Canadian, a Dutch national, two Senegalese and a Norwegian) along with an anthropologist (a US national). This advisory group was in charge of making *in loco* visits on a six monthly basis, and submitting direct reports to the President and the Board of Executive Directors⁴⁶. At the same time, the Bank contracted the Italian company D'Appolonia as External Compliance Monitoring Group (ECMG).

123. This particular development *ad hoc* shows how the Panel role is producing a culture change within the Bank with regard to accountability and independent supervision. Certainly, independent supervision contributes to reinforce compliance with the Bank's policies and procedures in the implementation phase. Apart from the suitability of these new schemes, it is reasonable to argue that these are by-products of a new era in which the Panel is having a leading role within the Bank in implementing a culture of increased transparency and accountability.

124. In conclusion, it is fair to say that the increasing social pressures to improve transparency and accountability in international finance institutions obtained one victory with the establishment of the World Bank Inspection Panel.⁴⁷

125. Nowadays, the Presidency and the Board of Executive Directors probably perceive to have lost some control over its own processes as a result of the social dynamics and pressures attempted to channel through the Panel. However, society cannot be channelled through a mere inspection mechanism, notwithstanding the critical role that the Panel currently plays.

126. Unquestionably, in any case, setting up the Inspection Panel has been a critical and positive development for both local communities and the Bank itself. Since the establishment of the Panel, the design and execution of projects has been inextricably linked to its procedures. In this respect, its procedures have attained a further level playing field for local communities with regard to human right to development generally.

127. However, civil society activism has a major agenda. Therefore, it is highly likely that their participation in Panel procedures will not inhibit their legitimate aspirations for structural reform of international economic institutions.

128. Participation is a fact of (social) life. Essentially, social aspiration to a better life tend to conceive democracy (read also democratization) as an open ongoing process⁴⁸. In consequence, it is easy to predict that society will continue to act both within and outside the Inspection Panel procedures in order to promote major structural policy change in economic global governance.

⁴⁶ See «Report of Mission to Cameroon and Chad, July 19-August 3, 2001», *International Advisory Group, Chad-Cameroon Petroleum Development and Pipeline Project*, IAG Secretariat, Montreal (28 September 2001).

⁴⁷ For the link between public participation and right to development in this regard, see L. BOISSON DE CHAZOURNES, «Public Participation in Decision-Making: The World Bank Inspection Panel», *The World Bank, International Financial Institutions, and the Development of International Law*, Edith Brown Weiss, Andres Rigo Sureda, and Laurence Boisson de Chazournes (eds), *Studies in Transnational Legal Policy*, American Society of International Law, 1999, pp.84-94.

⁴⁸ See for example, T. FRANCK, «The emerging right to democratic governance», 86 *American Journal of International Law* 1 (1992): 46-91.